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Supreme Court of the United States

October Term, 1958

No. 940

PAUL CASTELLANO,

Petitioner,

against

COMMISSION OF INVESTIGATION OF THE STATE OF NEW YORK.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner respectfully asks this Court to issue a writ of certiorari to review the final order of the Court of Appeals of the State of New York which affirmed an order of commitment.

This petition is supplemental to an appeal taken by petitioner from said final order. The Jurisdictional Statement on said appeal is being filed simultaneously herewith. Petitioner begs leave to refer to such Jurisdictional Statement for the formal allegations and copies of the required opinions and orders.

Questions Presented for Review

1. Was petitioner deprived of his liberty without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States by the refusal

of the court of original jurisdiction to grant any adjournment when petitioner received but a few hours notice of the application to commit.

2. Was petitioner deprived of his liberty without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States by being committed to prison for an indefinite time until he shall answer the various questions put to him "truthfully and responsively."

Statement of the Case

Petitioner was served with a subpoena on August 9, 1958 returnable August 12th, and was questioned on the morning of August 13th (R. 287, 288).* This questioning concluded at 12:45 P. M. (R. 191). Shortly thereafter petitioner was served with the order to show cause which was served before 2:30 P. M. (R. 285). The court hearing was held that afternoon (R. 283). It followed hearings held in connection with three others similarly situated (R. 228, 251, 265) at which orders of commitment were issued (R. 246, 263, 277). Counsel requested that this proceeding be held in abeyance pending appellate review of the earlier orders, but this was refused (R. 292, 294). Petitioner was then ordered committed (R. 295), pursuant to Section 406 of the Civil Practice Act of New York (see Jurisdictional Statement, pp. 23, 24) until he shall have answered the questions put to him "truthfully and responsively" (R. 18m).

The Appellate Division criticized the "precipitate haste with which the proceedings were conducted" (R. 344). But it upheld the order on the ground that no prejudice resulted because the result reached was correct (R. 344).

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* The references are to the pages of the certified record filed in *Miranda* v. *Commission*, No. 893, October 1958 Term.

While the Court of Appeals did not pass on this contention the amendment of the remittitur specifically states that the contention had been made under the Fourteenth Amendment and overruled.

How Issue Raised in State Court

In the New York Court of Appeals petitioner argued in Point II that "The commitment of appellants violated due process" (Brief, pp. 32-46) and in Point VI that "The overall effects of the proceedings are contrary to due process" (pp. 71-73), citing, in each instance, decisions of this Court. The first point dealt with the lack of sufficient notice; the second with the effect of the indefinite commitment and expressly referred to the Fifth, Eighth and Fourteenth Amendments to the United States Constitution (Brief, p. 73).

That the Court of Appeals considered and passed on these questions appears from its amended remittitur, particularly questions 1 and 3 (quoted on pp. 1 & 2 of the Jurisdictional Statement).

Reasons for Granting the Writ

1. The decision below is in conflict with decisions of this Court (*Cooke* v. *United States*, 267 U. S. 517; *In re Oliver*, 333 U. S. 257) in that it sanctions commitment without adequate notice. Here petitioner was questioned in the morning, haled into court on a few hours notice and immediately sent to jail. We have already quoted the misgivings of the Appellate Division on this score. It is not, we submit, enough to say, as did that Court, that no harm was done because petitioner has had appellate court review. For one of the problems presented in this case was the extent of cooperation between state and federal agencies. In the short time available it was obviously impossible for petitioner's counsel to develop this.

2. This case presents, for the first time, the question whether a citizen can be kept in jail indefinitely without charge of crime under an order which permits his release only if he answers the various questions asked him "truthfully and responsively". That this is no idle speculation is shown by the attempt of one of the persons originally involved to be released after giving testimony. His release was refused because the Commission had concluded that his answers were false; *Valenti* v. *McCloskey*, N. Y. L. J. March 30, 1959, page 11—not otherwise reported, affirmed by the Appellate Division, N. Y. L. J., May 8, 1959, page 12.

Such procedure is inconsistent with the rule laid down by this Court in *Ex parte Hudgings*, 249 U. S. 378, and *In re Michael*, 326 U. S. 224.

It is, therefore, respectfully submitted that the petition should be granted.

Osmond K. Fraenkel,
Counsel for Petitioner.